IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9165 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHIVLAL NARSINHJI OAD

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 9165 of 2003

MR SATISH R PATEL for Petitioner No. 1

MR RM CHAUHAN ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 11/09/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed against him by the Police Commissioner, Ahmedabad city on

10.4.2003 under the exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short). The petitioner was actually detained on 10.4.2003.

The grounds served upon the petitioner reveal that while passing the order of detention against the petitioner, the detaining authority took into consideration two aspects, firstly, registration of crimes against the petitioner on 9.4.2003 under the Bombay Prohibition Act for possession of 720 liters of country liquor and, secondly, in-camera statements of the witnesses recorded by the proposing authority on 9.4.2003 and verified by the detaining authority on 10.4.2003. In camera-statements relates to the fact that the petitioner indulged in activities of transport of illegal liquor and that the petitioner is a head strong person picks up quarrel and creates terror and fear. The witnesses have disclosed individual incidents of 15.3.2003 and 25.3.2003. From the above material, the order came to be passed as impugned in this petition.

Ld. advocate Mr. SR Patel for the petitioner and ld. AGP Mr. RM Chauhan for the respondents were heard at length. Ld. AGP Mr. Chauhan has placed on record the affidavit of detaining authority, which is also taken into consideration.

Out of various contentions raised on behalf of the petitioner and controverted by Ld. AGP. From the rival contentions, it clearly appears that this petition can be disposed of on the ground whether right of the petitioner as to effective representation to the Government is jeopardized as guaranteed under Article 22(5) of the Constitution of India. My attention was drawn to the representation made by the petitioner to the Police Commissioner. In turn, this representation was forwarded to the State Government which is an admitted fact. In the said representation, the petitioner has asked for a copy of Forensic Science Laboratory report in respect of crime registered against the petitioner. However, till today, such copy of FSL report is not made available to the petitioner and that also is an admitted fact. The reason which is advanced on behalf of the respondents is that the same was not available with the authority. The FSL report on which reliance is placed by the detaining authority is a material document and must be provided to the petitioner. In failing to do so, will jeopardize the right of the petitioner to make effective representation resulting in denial of guarantee envisaged

by Article 22(5) of the Constitution of India. The order impugned in this special civil application is required to be quashed on this ground alone. This view is supported by the two decisions of this court in the matter of Ramesh @ Bhangari Babaji Thakor (Zala) v. State of Gujarat & Ors., as reported in 2000(2) GLR p. 1777, wherein the court after relying upon two decisions of the Apex Court in the matter of Sophia Gulam Mohan. Bhan vs. State of Maharashtra as reported in 1999(6) SCC 593 and in the matter of Prakash Chandra Mehta v. Commissioner and Secretary, Government of Kerala, AIR 1986 SC 687 came to the conclusion that the FSL report includes in the ground. The meaning of the ground as interpreted by the Apex Court is taken into consideration by this court. Likewise, in Special Civil Application No. 1402/99 as decided by this Court on 7.10.1999, the same view was upheld. In this view of the matter, since the right of petitioner to make representation effectively is jeopardized the order in question is required to be quashed and set aside.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 10.4.2003 by the Police Commissioner, Ahmedabad City, under the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs. DS Permitted.

(J.R. VORA, J.)

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